IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

CRL.A.No. 300 of 2004()

CC.699/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, THODUPUZHA
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APPELLANT: COMPLAINANT

HASSAN S/O. SAIDU MOHAMMED,
KARIKATTIL VEEDU, VENGALLOOR,
KUMARAMANGALAM VILLAGE.

BY ADV. SRI.P.NOOR SEMIR

RESPONDENTS: ACCUSED & STATE:
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1. RAJU THOMAS S/O. THOMAS, KARAKKUNNEL
HOUSAE, KUMARAMANGALAM VILLAGE.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY P.P.SRI.THOMAS JOHN AMBOOKKAN FOR R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18-8-2007 , THE COURT ON 18/08/2007 DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl. A. No. 300 of 2004

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Dated this the 18th day of August, 2007

JUDGMENT

The appeal is filed by the complainant against the judgment in C.C.No. 699/2000 on the file of the Judicial Magistrate of the First Class -II, Thodupuzha. As per the complaint, the 1st respondent borrowed an amount of Rs.15,000/- from the appellant and in discharge of the said amount Ext.P1 cheque was issued in favour of the appellant and when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of funds in the account of the 1st respondent. On receipt of the intimation of the dishonour of the cheque, a lawyer's notice was caused to the 1st respondent. The notice issued to the 1st respondent was returned with the endorsement "unclaimed". Hence, the complaint was filed alleging commission of offence punishable under section 138 of the Negotiable Instruments Act.

2. On the side of the prosecution, the appellant himself was examined as PW1 and Exts.P1 to P6 were marked. On the side of the defence, Dws.1 to 4 were examined and Ext.D1 was marked.

3. After considering the entire evidence, the trial court acquitted the 1st respondent stating that the prosecution had not proved the case

against him beyond reasonable doubt. Aggrieved by the above, the complainant has approached this Court by filing this appeal for setting aside the impugned judgment.

4. This Court heard learned counsel for the appellant, learned counsel for the 1st respondent, learned Public Prosecutor and perused the materials placed on record.

5. The main contention of the appellant is that court below went wrong in finding that there was no proper service of notice of the dishonouring of the cheque to the 1st respondent. It is further contended that as per the decisions of this Court reported in Moidu V. Omega Pipes Ltd. (1994(1) KLT 44), Bhavani Auto Distributors V. Muraleedharan K. and another (ILR 2007(3) Ker. 55) and a decision of the Apex Court reported in Ramesh Aggarwal V. Amit J. Bhalla ((2001)1 SCC 631, the trial court ought to have allowed the complaint.

6. The only reason stated by the trial court acquitting the 1st respondent is that the statutory notice as contemplated under section 138(b) of the Negotiable Instruments Act had not been served on the 1st respondent, as such he could not be held liable under section 138 of the Act. In Moidu's case (Supra) this Court held that if the payee had despatched notice in the correct address of the drawer reasonably head of the expiry of 15 days it

could be regarded that he made the demand by giving notice within the statutory period. Further as per the dictum laid down by the Apex Court in Rajneesh Agarwal's case the Apex Court held that the object of issuing notice indicating the factum of dishonour of the cheques was to give an opportunity to the drawer to make the payment within 15 days. It has come out in evidence that the notice issued to the 1st respondent was returned by the postal authorities "unclaimed".

7. In the circumstances, the finding of the trial court that statutory notice as contemplated under section 138(b) of the Negotiable Instruments Act had not been served on the 1st respondent is not legally sustainable. Hence, the impugned judgment is set aside and the matter is remitted to the trial court for fresh consideration. The trial court is directed to consider the matter afresh from the stage at which the impugned judgment has been passed.

The parties shall appear before the trial court on 29th September, 2007.

The court shall issue fresh notice to the 1st respondent .

The records shall be forwarded to the trial court forthwith.

K. Thankappan,
Judge.

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K. Thankappan,J.

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Crl.A. 11 of 1999

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Judgment
31-5-2007